



Attorney's Docket No.: 13764-003001 <sup>HB</sup>

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Keith et al.  
Serial No. : 10/024,701  
Filed : December 17, 2001  
Title : METHODS FOR PREPARING PURIFIED DAPTOMYCIN

Art Unit : Unknown  
Examiner : Unknown

Commissioner for Patents  
Washington, D.C. 20231

RECEIVED

DEC 03 2002

OFFICE OF PETITIONS

DECLARATION OF TIMOTHY J. DOUROS, ESQ. IN SUPPORT OF  
PETITION UNDER 37 C.F.R. 1.47(a)

Sir:

I, Timothy J. Douros, hereby declare as follows:

1. I am employed by CUBIST PHARMACEUTICALS, INC. (hereafter "Cubist") as Chief Intellectual Property Counsel and am admitted to practice before the United States Patent and Trademark Office.
2. On or about December 1999, Cubist entered into a "Crystallization Development Agreement" (hereafter referred to as "the Agreement") with ALTUS BIOLOGICS INC. (hereafter "Altus"), a U.S. company having a place of business at 625 Putnam Street, Cambridge, Massachusetts 02139. A notarized photocopy of the Agreement is attached as Exhibit A to this declaration.
3. The Agreement states, in Section 1, that "Cubist will have the right to acquire Altus Material, Altus' technology, the data and know how generated while conducting this study and intellectual property assets for the crystallization of Daptomycin as discussed in Section 3."
4. Section 3 of the Agreement states, in pertinent part, that "If Altus successfully develops a crystallization process for Daptomycin meeting the target specification, Altus will provide samples and process methodology to Cubist. Cubist will then have ninety days (90) after delivery of Altus' sample and information to reproduce and verify Altus' results or dispute the

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CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit

October 28, 2002

Signature

Roberta L. Hahn

Roberta L. Hahn

Typed or Printed Name of Person Signing Certificate

finding. Within ninety days (90) after Cubist receives the sample and confirms Altus' results, Cubist shall make the following process development milestone payments to Altus:

Starting Material Quality	Target /Outcome	Phase	Milestone
Highest Purity Available	<u>Crystalline material of daptomycin</u> $\geq$ 98% Purity	I	\$100,000
Current Grade - <90% Purity	Two-step crystallization to achieve <u>crystalline material of daptomycin</u> $\geq$ 98% Purity	II	Additional \$200,000

5. Section 3 of the Agreement further states, in pertinent part, that "Upon payment by Cubist to Altus for achieving either of the two milestones shown above, Cubist will have exclusive rights with right to sublicense to the Altus Material and data and know how information disclosed as outlined in Section 8."

6. Section 8 of the Agreement states, in pertinent part, that "Cubist will have the right to acquire Altus Materials, Altus' technology, data, know how and intellectual property assets, including patent rights with respect thereto, developed under this agreement, subsequent to the payment by Cubist of either of the milestone payments outlined in Section 3."

7. Section 8 of the Agreement defines "Intellectual Property" as "the Altus Materials, Altus' technology and intellectual property assets, including patent rights with respect thereto, the data and protocols for crystallization developed under this agreement created for Cubist as part of the Project, as well as any invention conceived or made solely by one or more employees of Altus or jointly made by one or more employees of Altus and one or more employees of Cubist in connection with performance of the Project . . . ."

8. The above identified application claims an "invention conceived or made solely by one or more employees of Altus or jointly made by one or more employees of Altus and one or more employees of Cubist in connection with performance of the Project," as stated in Section 8 of the Agreement.

9. Upon information and belief, Chandrika Govardhan was, at all relevant times, an employee of Altus who jointly conceived and/or made the invention claimed in the above-identified application.

10. Upon information and belief, Nazer Khalaf was, at all relevant times, an employee of Altus who jointly conceived and/or made the invention claimed in the above-identified application.

11. Section 8 of the Agreement further states, in pertinent part, that "Upon receipt of either of the milestone payments in Section 3., Altus hereby assigns to Cubist all of Altus' rights to, and interest in, the Intellectual Property."

12. In or about October 2000, Cubist paid, and Altus accepted, the \$100,000 milestone payment referred to in Section 3 of the Agreement.

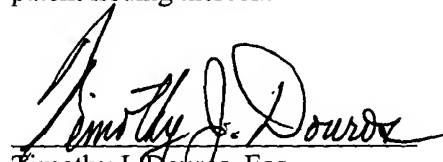
13. Upon information and belief, Chandrika Govardhan is obligated under the Agreement to assign to Cubist all of her rights to, and interest in, the above-identified application.

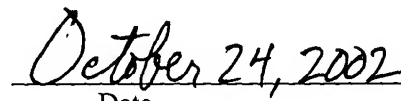
14. Upon information and belief, Nazer Khalaf is obligated under the Agreement to assign to Cubist all of his rights to, and interest in, the above-identified application.

15. On October 16, 2002, I forwarded by overnight courier to Richard Forrest, General Counsel for Altus, a copy of the above-identified application and the Declaration & Power of Attorney to be signed by Chandrika Govardhan and Nazar Khalaf. Also included in this delivery was a letter to Richard Forrest requesting the executed Declaration & Power of Attorney be returned to me no later than October 22, 2002. A copy of the letter is attached herewith as Exhibit B.

16. As of October 23, 2002, I had not received the executed documents from Richard Forrest. On this basis I have concluded that, as of today, Chandrika Govardhan and Nazar Khalaf are unwilling to sign the Declaration & Power of Attorney for the above-identified application.

17. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

  
Timothy J. Douros, Esq.  
Chief Intellectual Property Counsel  
Cubist Pharmaceuticals, Inc.

  
Date



Commonwealth of Massachusetts )  
 ) ss.  
County of Middlesex )

I HEREBY CERTIFY that the attached is a true and correct copy of the Crystallization Development Agreement, having an effective date of December 08, 1999, and entered into by and between Altus Biologics Inc. and Cubist Pharmaceuticals, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the notary public seal this 2<sup>nd</sup> day of October, 2002.

  
NOTARY PUBLIC

My commission expires 10/10/08

**COMBINED DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled METHODS FOR PREPARING PURIFIED DAPTOMYCIN, the specification of which:

- ☐ is attached hereto.  
☒ was filed on December 17, 2001 as Application Serial No. 10/024,701 and was amended on April 18, 2002.  
☐ was described and claimed in PCT International Application No. \_\_\_\_\_ filed on \_\_\_\_\_ and as amended under PCT Article 19 on \_\_\_\_\_.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose all information I know to be material to patentability in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby claim the benefit under Title 35, United States Code, §119(e)(1) of any United States provisional application(s) listed below:

<u>U.S. Serial No.</u>	<u>Filing Date</u>	<u>Status</u>
60/256,268	December 18, 2000	Expired
60/274,741	March 9, 2001	Expired
60/340,525	December 13, 2001	Pending

I hereby appoint the following attorneys and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

Louis Myers, Reg. No. 35,965  
Laurie Butler Lawrence, Reg. No. 46,593

John W. Freeman, Reg. No. 29,066  
Janice L. Kugler, Reg. No. 50,429

Address all telephone calls to LAURIE BUTLER LAWRENCE at telephone number (617) 521-7814.

Address all correspondence to LOUIS MYERS at:

FISH & RICHARDSON P.C.  
225 Franklin Street  
Boston, Massachusetts 02110-2804

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

**Combined Declaration and Power of Attorney**  
Page 2 of 2 Pages

Full Name of Inventor: DENNIS KEITH  
Inventor's Signature: Dennis Keith Date: 10/16/02  
Residence Address: Montclair, NJ  
Citizenship: United States  
Post Office Address: 8 Mendle Terrace  
Montclair, NJ 07042

Full Name of Inventor: CHANDRIKA GOVARDHAN  
Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Residence Address: Lexington, MA  
Citizenship: India  
Post Office Address: 9 Scotland Rd  
Lexington, MA 02420

Full Name of Inventor: NAZER KHALAF  
Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Residence Address: Worcester, MA  
Citizenship: United States  
Post Office Address: 14 Lauf Street  
Worcester, MA 01602